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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 368

MICHIGAN GAS AND ELECTRIC COMPANY, *Petitioner*

v.

FEDERAL POWER COMMISSION, MICHIGAN WISCONSIN PIPE LINE COMPANY, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REUBEN GOLDBERG
314 Riddell Building
Washington 6, D. C.

MELVIN RICHTER
826 Pennsylvania Building
Washington 4, D. C.

Attorneys for Petitioner
Michigan Gas and Electric Company

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TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement	2
Reasons for Granting the Writ	10
Conclusion	19

Appendix A	1a
Appendix B	1b
Appendix C	1c

TABLE OF CITATIONS

Court Decisions:

Atlantic Refining Co. v. Public Service Commission of the State of New York, 360 U.S. 378 (1959)	11
Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944)	11
Federal Power Commission v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961)	11
Michigan Consolidated Gas Company v. Federal Power Commission, 283 F. 2d 204 (1960), certiorari denied, 364 U.S. 913 (1960)	7
Panhandle Eastern Pipe Line Company v. Public Service Commission, 332 U.S. 507 (1946)	12
Phillips Petroleum Co. v. State of Wisconsin, 347 U.S. 672 (1954)	11
Sunray Mid-Continent Oil v. Federal Power Commission, 364 U.S. 137 (1960)	11

Page

FEDERAL POWER COMMISSION CASES:

American Louisiana Pipe Line Company, et al., 20 F.P.C. 575 (1958) 6
Michigan Wisconsin Pipe Line Co., 9 F.P.C. 127 (1950) 9, 14
Michigan Wisconsin Pipe Line Co., 21 F.P.C. 552 (1959) 8
Michigan Wisconsin Pipe Line Co., 24 F.P.C. 177 (1960) 8
Michigan Wisconsin Pipe Line Co., Docket No. G-20572, Opinion No. 345, issued June 28, 1961, mimeo ed. 18
Northern Natural Gas Company, 11 F.P.C. 174 (1952) 14
Otter Tail Power Company, 2 F.P.C. 134 (1940) 11, 14
Panhandle Eastern Pipe Line Co., 10 F.P.C. 328 (1951) 14
San Juan Pipe Line Co., 9 F.P.C. 170 (1950) 14

STATUTES:

The Natural Gas Act, 52 Stat. 821 (1938) as amended, 15 U.S.C. 717 *et seq.*

Section 4(b) 11, 17
Section 5(a) 11

MISCELLANEOUS:

Area Labor Market Trends, Bureau of Employment Security, U. S. Department of Labor, (June, 1961, Supplement) 4

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Michigan Gas and Electric Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on April 20, 1961.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, *infra*, pp. 1a-5a) is reported at 290 F. 2d 374. The opinion of the Federal Power Commission, issued October 31, 1959 (R. 339-397) is reported at 22 F.P.C. 775; the Commission's order denying rehearing, issued December 29, 1959 (R. 428-447) is reported at 22 F.P.C. 1157.

JURISDICTION

The judgment of the Court of Appeals was entered on April 20, 1961 (App. B, *infra*, p. 1b). A petition for rehearing, timely filed was denied on June 1, 1961 (App. C, *infra*, p. 1c). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the responsibility of the Federal Power Commission to prevent undue discrimination under Section 4(b) of the Natural Gas Act is properly discharged when, in the presence of such discrimination, the Commission restricts its consideration of means for the elimination thereof only to the suggestions made by those affected thereby and, upon rejection of these suggestions, does not undertake itself to devise means for its elimination, thereby leaving the unlawful discrimination outstanding and operative.

STATUTE INVOLVED

Section 4 of the Natural Gas Act, 52 Stat. 821, 822 (1938) provides in pertinent part:

> (b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

STATEMENT

Petitioner, Michigan Gas and Electric Company (Michigan Gas), is a Michigan corporation engaged in the business of distributing gas and electricity to consumers in various communities in the State of Michigan (R. 151-152). For at least a half century, Michigan Gas has been dis-

tributing manufactured gas in the Upper Peninsula of Michigan.[1] Michigan Gas at present distributes manufactured gas in three Upper Peninsula communities of Marquette, Negaunee, and Ishpeming (R. 152-153) and has franchises to distribute natural gas there and in the four communities of Gladstone, Kingsford, Norway, and Iron Mountain (R. 153-155).

Michigan Gas proposes to distribute natural gas in the three communities now receiving manufactured gas as well as in the four communities which are presently without any type of gas service. In addition, Michigan Gas will sell natural gas to the City of Escanaba,[2] for resale; to Cleveland Cliffs Iron Company (Cleveland Cliffs), the largest independent producer of iron ore in the United States, for use in connection with a process for upgrading low-grade iron ore; and to other industrial users on a firm and interruptible basis (R. 20-23, 153-154).

The Upper Peninsula, which consists of Michigan's fifteen northernmost counties,[3] is one of the few remaining areas in the country without the benefits and advantages of natural gas. Although it has bountiful natural resources of timber, iron ore, copper, and productive soil as well as unlimited supplies of chemically pure water (R. 122), the Upper Peninsula at present is an economically depressed

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[1] In addition, in the southwestern or Lower Peninsula area of Michigan, Michigan Gas serves electricity in a four-county area through an integrated electric transmission system and natural gas to fourteen communities (R. 151-152), purchasing its entire natural gas requirements therefor from Michigan Wisconsin Pipe Line Company (R. 152).

[2] The City of Escanaba presently operates a municipally-owned manufactured-gas distribution system.

[3] Bounded on the south by the State of Wisconsin and on all other sides by Lakes Superior, Huron, and Michigan, and connecting waters (R. 122).

area and has so been declared by the Federal Government.[4] At present, the Upper Peninsula is primarily a one-industry economy, i.e., the iron ore mining industry which is dependent upon low-grade iron ore and, consequently, is suffering seriously from the severe competition of extremely high-grade iron ore imported from abroad and domestic ores developed in other regions in the Lake Superior district, particularly the Mesabi range (R. 21-22).

The availability of competitively-priced natural gas would greatly stimulate the growth and industrial advancement of the Upper Peninsula. In addition to making this premium fuel available to the householder, it would facilitate the development of the area's vast reserves of low-grade iron ore on a basis competitive with the foreign ores and ores from the Mesabi range (R. 21-25, 125, 126-127). Recent advances in technology have developed methods for the "beneficiation" of the low-grade ore and the "pelletizing" of the resulting iron particles into small balls of high iron content (R. 21-22, 125).[5] Heat is an essential element of the process and inasmuch as fundamental requisites of these processes are control of heat and freedom from impurities, such as sulphur (R. 21-24), natural gas with these special properties is the ideal fuel.

Competitively-priced natural gas also would provide a strong impetus in the revitalization of the forest products

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[4] Bureau of Employment Security, U. S. Department of Labor, *Area Labor Market Trends* (June, 1961, Supplement), pp. 13, 15.

[5] The reserves of high-grade iron ore in the Upper Peninsula "are now depleted to a large extent, or are too expensive to extract by underground mining methods" (R. 21). There remain, however, tremendous reserves of low-grade iron ore (R. 21, 125). To compete with the foreign, high-grade iron ores and upgraded low-grade ores of the Mesabi range, the iron ore industry of the Upper Peninsula has been compelled to develop processes to convert the low-grade ores into a high-grade product of comparable quality and price (R. 21-22).

industry, where it is needed in connection with the various essential drying processes, and would be of substantial assistance in the rebirth of copper mining (one company having indicated its ability to use 7 million cubic feet of gas per day (R. 124-125). Coupled with the further attraction of new industry resulting from the availability of natural gas (R. 126-127), this serves to diversify the economy of the Upper Peninsula and release it from its virtual dependence on the economic fortunes of a single industry. The resulting broader and more healthy economic base with its concomitant improvement in jobs and wages for the residents of the area would markedly enhance their economic well-being.[6]

In view of the Upper Peninsula's needs and industrial potential, Michigan Gas, at substantial expense since at

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[6] As summarized by the Michigan Public Service Commission in supporting Michigan Gas' efforts to secure natural gas for the Upper Peninsula in the Commission proceeding (R. 159):

> The vast area known as the Upper Peninsula of Michigan and particularly the communities above named [i.e., the communities to which Michigan Gas would serve natural gas], have an economic potential which has never been achieved. It is the considered opinion of the Michigan Commission, founded upon long and careful observation of utility operations in the Upper Peninsula, that a primary reason for this economic retardation is a shortage of sources of energy, including the complete lack of any natural gas service.
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> The introduction of natural gas to the Upper Peninsula would be an invaluable aid to the fulfillment of the promising future which beckons the Upper Peninsula. This source of energy would assist in retaining present industry and promoting the growth thereof as well as induce new industry to locate in the region. The Michigan Commission believes the foregoing to be an outstanding example of the public interest to be served pursuant to the provisions of the Natural Gas Act.